



COUNTY OF LOS ANGELES
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June 25, 2003

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Syn. No. 39
03-25-03

TO: SUPERVISOR YVONNE BRATHWAITE BURKE, Chair
SUPERVISOR GLORIA MOLINA
SUPERVISOR ZEV YAROSLAVSKY
SUPERVISOR DON KNABE
SUPERVISOR MICHAEL D. ANTONOVICH

FROM: LLOYD W. PELLMAN
County Counsel

A handwritten signature in dark ink, appearing to read "LW Pellman", is written over the printed name of Lloyd W. Pellman.

RE: **Status of Petitions for U.S. Supreme Court Review in
Elk Grove Unified School District v. Newdow (02-1624) –
Constitutionality of the Pledge of Allegiance**

At your meeting of March 25, 2003, your Board directed my office to keep you apprised of the status of the petition for writ of certiorari filed with the United States Supreme Court by the Elk Grove Unified School District ("District") in the above-referenced case. The petition seeks review of the Ninth Circuit Court of Appeals February 28, 2003, amended decision which struck down the District's policy of requiring teachers to lead willing students in the Pledge of Allegiance ("Pledge") on a daily basis, as violative of the Establishment Clause of the United States Constitution.

The District's petition, which was filed on April 30, 2003, argues that the Ninth Circuit's decision implicitly rules that the Pledge is unconstitutional as an endorsement of religion. In support of the petition, the District argues, among other things, that the decision not only conflicts with a Seventh Circuit Court of Appeal decision in *Sherman v. Community Consolidated School District 21 of Wheeling Township*, 980 F.2d 437 (7th Circuit 1992), *cert. denied* 508 U.S. 950 (1993) [holding that the Pledge does not violate the Establishment Clause], but also with numerous Supreme Court affirmations regarding the constitutionality of the Pledge.

Amicus briefs in support of the District were filed by the United States Senate, United States House of Representatives Bipartisan Legal Advisory Group, Governor Gray Davis, Idaho Governor Kirk Kempthorne, and the American Legion. A response to the District's petition must be filed by respondent Michael Newdow by July 7, 2003.

In a companion case, *United States of America v. Newdow* (02-1574), the United States Solicitor General filed a petition for writ of certiorari on April 30, 2003, also seeking review of the Ninth Circuit's decision. A response to the United States' petition must be filed by June 27, 2003.

Should you wish to obtain copies of the petitions filed by the District and Solicitor General, please contact Principal Deputy County Counsel Manuel A. Valenzuela at (213) 974-0691. We will keep you informed of any further developments with respect to the petitions.

LWP:MAV:mag

c: David E. Janssen
Chief Administrative Officer

Violet Varona-Lukens, Executive Officer
Board of Supervisors